

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**RPOST HOLDINGS, INC and  
RPOST INTERNATIONAL LIMITED**

Plaintiffs,

v.

**REWPOST.COM,**

Defendant.

**CIVIL ACTION NO. 2:11-cv-00263**

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT**

In this Complaint against Rewpost.com, Plaintiffs RPost Holdings, Inc. and RPost International Limited allege, based on their own knowledge with respect to their own actions and based on information and belief with respect to all other actions, as follows:

**NATURE OF THE ACTION**

1. This is a civil action for willful infringement of a federally registered trademark under the United States Trademark Act (“the Lanham Act”), 15 U.S.C. §1051 et seq., for willful use of false designations of origin, and false descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), for trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c), and for related claims of common law trademark infringement and dilution, unfair competition, damage to business reputation, and unjust enrichment in violation of the laws of the State of Texas.

**PARTIES**

2. RPost International Limited (“RPI”) is a corporation organized under the laws of the Nation of Bermuda. It is the owner of United States Trademark Registration No. 2,928,365 for the mark REGISTERED E-MAIL® for “delivery of messages by electronic transmission to a

designated recipient to provide results on a basis equivalent to the results obtained by registered mail,” which registered on February 22, 2005 and is valid and subsisting. It is further the owner of United States Trademark Registration No. 2,867,278 for the mark (R)egistered e-mail® for “delivery of messages by electronic transmission to a designated recipient to provide results on a basis equivalent to the results obtained by registered mail,” which registered on July 27, 2004 and is valid and subsisting.

3. RPost Holdings, Inc. (“RPH”) is a corporation organized under the laws of the State of Delaware having a business office in Plano, Texas. It is a licensee, from RPI, of the right to use the registered trademarks REGISTERED E-MAIL® and (R)egistered e-mail®.

4. On information and belief, Defendant Rewpost.com is a Swiss entity having its principal place of business at Ruetiweid 6, 6023 Rothenburg Switzerland. Rewpost.com claims to provide registered email services. Rewpost.com has committed acts of infringement and other unlawful acts in this judicial district and does regular business in this judicial district, including using the term “Registered Email” in commerce in connection with the sale, offering for sale, or advertising of its services in this judicial district.

5. On information and belief, Rewpost.com is a nonresident of Texas who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process in this state. On information and belief, Rewpost.com resides in this jurisdiction within the meaning of 28 U.S.C. § 1400(b). This proceeding arises, in part, out of business done in this state. Rewpost.com may be served with process in Switzerland under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action under Section 39(a) of the Lanham Act, 15 U.S.C. § 1121(a); 28 U.S.C. §§ 1331 (federal question jurisdiction), 1338(a)

(trademark infringement), 1338(b) (unfair competition); and 28 U.S.C. §1367(a) (supplemental jurisdiction over state law claim).

7. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2), (c), (d) and/or 1400(b). On information and belief, Rewpost.com conducts business in this district, the claims alleged in this Complaint arise in this district, the acts of infringement have taken place and are continuing to take place in this district, and Rewpost.com is an alien who may be sued in any district.

8. On information and belief, Rewpost.com is subject to this Court's general and specific personal jurisdiction because Rewpost.com has minimum contacts within the State of Texas and the Eastern District of Texas, including via the website [www.rewpost.com](http://www.rewpost.com), under due process and/or the Texas Long Arm Statute, Rewpost.com has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Rewpost.com regularly conducts and solicits business within the State of Texas and within the Eastern District of Texas; and Plaintiffs' causes of action arise directly from Rewpost.com's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

9. More specifically, Rewpost.com directly and/or through intermediaries uses the term "Registered Email" in commerce in connection with offering for sale, sale, and/or advertising (including the provision of an interactive website) of products and services in the United States, the State of Texas, and the Eastern District of Texas. On information and belief, Rewpost.com has committed acts of infringement in the State of Texas and in the Eastern District of Texas. Rewpost.com solicits customers in the State of Texas and in the Eastern District of Texas. On information and belief, Rewpost.com has paying customers who are

residents of the State of Texas and the Eastern District of Texas and who use Rewpost.com's products and services in the State of Texas and in the Eastern District of Texas.

**COUNT I**  
**VIOLATION OF § 32 OF THE LANHAM ACT, 15 U.S.C. §1114**

10. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

11. On information and belief, Rewpost.com advertises and /or has advertised its service as "Registered Email." In doing so, Rewpost.com infringes RPI's federally registered trademarks REGISTERED E-MAIL® and (R)egistered e-mail®.

12. Rewpost.com's unauthorized use of the term "Registered Email" in commerce in connection with the sale, offering for sale, or advertising of its services is likely to cause confusion or to deceive others as to the origin of that term or to cause mistake or to deceive others into believing that Plaintiffs sponsor, are connected, or affiliated with Rewpost.com or that Plaintiffs have approved Rewpost.com's use of that term, all to the detriment of Plaintiffs.

13. On information and belief, Rewpost.com's unlawful acts have been committed with knowledge of RPI's prior, registered rights in the REGISTERED E-MAIL® and (R)egistered e-mail® marks.

14. Rewpost.com's unlawful acts have caused irreparable injury to Plaintiffs for which there is no adequate remedy at law, and will continue to cause irreparable injury to Plaintiffs unless enjoined.

15. On information and belief, Rewpost.com has profited from their unlawful actions and has been unjustly enriched to the detriment of Plaintiffs. Rewpost.com's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

**COUNT II**  
**VIOLATION OF § 43(a) OF THE LANHAM ACT, 15 U.S.C. §1125(a)**

16. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

17. Rewpost.com's unauthorized use of the term "Registered Email" constitutes a false designation of origin, a false or misleading description of fact, or a false or misleading representation of fact within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

18. Rewpost.com's unauthorized use of the term "Registered Email" in commerce in connection with the sale, offering for sale, or advertising of its service is likely to cause confusion or to deceive others as to the origin of those terms or to cause mistake or to deceive others into believing that Plaintiffs sponsor, are connected, or affiliated with Rewpost.com or that Plaintiffs have approved Rewpost.com's use of that term, all to the detriment of Plaintiffs.

19. On information and belief, Rewpost.com's unlawful acts have been committed with knowledge of RPI's prior, registered rights in the REGISTERED E-MAIL® and (R)egistered e-mail® marks.

20. By reason of Rewpost.com's unlawful acts, Plaintiffs have suffered, is suffering and, unless Rewpost.com is restrained, will continue to suffer, irreparable injury for which there is no adequate remedy at law.

21. On information and belief, Rewpost.com has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiffs. Rewpost.com's unlawful actions have caused Plaintiffs monetary damage in an amount presently unknown, but in an amount to be determined at trial.

**COUNT III**

**VIOLATION OF § 43(c) OF THE LANHAM ACT, 15 U.S.C. 1125(c)**

22. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

23. The REGISTERED E-MAIL® and (R)egistered e-mail® marks are strong, distinctive, and famous within the relevant market.

24. Rewpost.com's unlawful use of the term "Registered Email" is likely to cause dilution of the distinctive quality of RPI's marks and decreasing the capacity of such marks to identify and distinguish Plaintiffs' services.

25. On information and belief, Rewpost.com's unlawful acts have been committed with knowledge of RPI's prior, registered rights in the REGISTERED E-MAIL® and (R)egistered e-mail® marks.

26. Rewpost.com's unlawful acts have caused irreparable injury to Plaintiffs for which there is no adequate remedy at law, and will continue to cause irreparable injury to Plaintiffs unless enjoined.

27. On information and belief, Rewpost.com has profited from its unlawful actions and has been unjustly enriched to the detriment of RPI. Rewpost.com's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

**COUNT IV**  
**COMMON LAW TRADEMARK INFRINGEMENT**

28. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

29. RPI owns all rights, title, and interest in and to the REGISTERED E-MAIL® and (R)egistered e-mail® marks, including all common law rights in such marks.

30. Rewpost.com has used and is continuing to use of the term “Registered Email” in a manner that is confusingly similar to the RPI marks.

31. Rewpost.com’s unlawful acts constitute trademark infringement in violation of the common law of the State of Texas.

32. By reason of Rewpost.com’s acts, Plaintiffs have suffered, is suffering and, unless Rewpost.com is restrained, will continue to suffer, irreparable injury for which there is no adequate remedy at law.

33. On information and belief, Rewpost.com has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiffs. Rewpost.com’s unlawful actions have caused Plaintiffs monetary damage in an amount presently unknown, but in an amount to be determined at trial.

**COUNT V**  
**COMMON LAW UNFAIR COMPETITION**

34. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

35. Rewpost.com’s use of the term “Registered Email” permits Rewpost.com to use and benefit from the goodwill and reputation earned by Plaintiffs to obtain a ready customer’s acceptance of Rewpost.com’s services, and constitutes unfair competition, palming off, and misappropriation in violation of Texas common law, for which Plaintiffs are entitled to recover any and all remedies provided by such common law.

36. By reason of Rewpost.com’s acts, Plaintiffs have suffered, are suffering and, unless Rewpost.com is restrained, will continue to suffer, irreparable injury for which there is no adequate remedy at law.

37. On information and belief, Rewpost.com has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiffs. Rewpost.com's unlawful actions have caused Plaintiffs monetary damage in an amount presently unknown, but in an amount to be determined at trial.

**COUNT VI**  
**INJURY TO BUSINESS REPUTATION AND**  
**TRADEMARK DILUTION, §16.29 T.B.C.C.**

38. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

39. The REGISTERED E-MAIL® and (R)egistered e-mail® marks are strong, distinctive, and famous within the relevant market.

40. Rewpost.com's unlawful use of the term "Registered Email" has diluted the distinctive quality of RPI's marks and decreased the capacity of such marks to identify and distinguish RPI's services. As such, Rewpost.com's act violate §16.29 of the Texas Business and Commerce Code.

41. Rewpost.com's unlawful use of the term "Registered Email" has also caused harm to Plaintiffs' business reputation in violation of §16.29 of the Texas Business and Commerce Code.

42. Rewpost.com's unlawful acts have caused irreparable injury to Plaintiffs for which there is no adequate remedy at law, and will continue to cause irreparable injury to Plaintiffs unless enjoined.

43. On information and belief, Rewpost.com has profited from their unlawful actions and has been unjustly enriched to the detriment of Plaintiffs. Rewpost.com's unlawful actions



have caused Plaintiffs monetary damage in an amount presently unknown, but in an amount to be determined at trial.

**COUNT VII**  
**COMMON LAW UNJUST ENRICHMENT**

44. Plaintiffs re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth in this Count.

45. Rewpost.com has unjustly enriched itself, and continues to do so, in an amount unknown.

46. Plaintiffs are entitled to just compensation under Texas common law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment that Rewpost.com has violated Section 32 of the Lanham Act (15 U.S.C. §1114); Rewpost.com has violated Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)); Rewpost.com has violated Section 43(c) of the Lanham Act (15 U.S.C. §1125(c)); Rewpost.com has engaged in trademark infringement and unfair competition in violation of the common law of the State of Texas; Rewpost.com has injured Plaintiffs' business reputation and diluted RPI's trademarks in violation of §16.29 of the T.B.C.C.; and that Rewpost.com has been unjustly enriched in violation of Texas common law.

2. An order enjoining and restraining, during the pendency of this action and permanently, Rewpost.com and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert with Rewpost.com from:

- a. using the marks REGISTERED E-MAIL® or (R)egistered e-Mail® and any confusingly similar designation alone or in combination with other words or

designs, as a trademark, service mark, trade name component, title, Internet domain name, or otherwise, to market, advertise, distribute, sell or identify any products and services;

- b. doing any other act likely to induce the confusing or mistaken belief that Rewpost.com or its products, services or commercial activities are in any way affiliated, connected, or associated with Plaintiffs;
- c. using a name or mark confusingly similar to RPI's REGISTERED E-MAIL® and (R)egistered e-Mail® marks, incorporating RPI's marks, or otherwise infringing RPI's marks;
- d. unfairly competing with Plaintiffs in any manner whatsoever;
- e. causing likelihood of confusion and injury to Plaintiffs' business reputation;
- f. diluting RPI's REGISTERED E-MAIL® and (R)egistered e-Mail® marks;
- g. committing any other act or making any other statement which infringes, dilutes RPI's REGISTERED E-MAIL® and (R)egistered e-Mail® marks, or constitutes an act of infringement, dilution, unfair competition, unjust enrichment, or damage to Plaintiffs' business reputation under federal common law or the common law of the State of Texas;

3. An award of all damages suffered by Plaintiffs resulting from Rewpost.com's acts alleged in this Complaint, including but not an accounting for any and all profits derived by Rewpost.com from its illegal acts alleged in this Complaint, and to which Plaintiffs are entitled under 15 U.S.C. § 1117;

4. An award trebling the amount of damages awarded Plaintiffs under 15 U.S.C. §§ 1114 and 1117;

5. A declaration that this is an exceptional case and awarding Plaintiffs their full costs, expert witness fees, and reasonable attorneys' fees incurred in connection with this action under 15 U.S.C. § 1117;

6. An award of any actual and putative damages to which Plaintiffs are entitled to under applicable federal and state laws; and

7. Any and all other relief that the Court or the jury may deem proper and just.

**DEMAND FOR JURY TRIAL**

Plaintiffs RPost Holdings, Inc. and RPost International Limited under Rule 38 of the Federal Rules of Civil Procedure, request a trial by jury of any issues so triable by right.

Respectfully Submitted,

Dated: May 19, 2011

By: /s/ Winston O. Huff

Winston O. Huff, Attorney in Charge  
State Bar No. 24068745  
Huff Legal Group, P.C.  
2500 Dallas Parkway, Suite 260  
Plano, TX 75093  
972.826.4467 (Direct)  
972.378.9111 (Firm)  
214.593.1972 (Fax)  
[wohuff@hufflegallgroup.com](mailto:wohuff@hufflegallgroup.com)

OF COUNSEL:

Lewis E. Hudnell, III  
Hudnell Law Group P.C.  
244 Fifth Avenue Suite 240H  
New York, New York 10001  
Tel: 347.855.4772  
Fax: 347.772.3034  
[lewis@hudnelllaw.com](mailto:lewis@hudnelllaw.com)

**ATTORNEYS FOR PLAINTIFFS  
RPOST HOLDINGS, INC. AND RPOST  
INTERNATIONAL LIMITED**

**CERTIFICATE OF FILING**

I certify that on May 19, 2011, I electronically filed the foregoing Complaint with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

By: /s/ Winston O. Huff

Winston O. Huff, Attorney in Charge  
State Bar No. 24068745  
Huff Legal Group, P.C.  
2500 Dallas Parkway, Suite 260  
Plano, TX 75093  
972.826.4467 (Direct)  
972.378.9111 (Firm)  
214.593.1972 (Fax)  
[wohuff@hufflegalgroup.com](mailto:wohuff@hufflegalgroup.com)